

Public Chapter 389

SENATE BILL NO. 626

By Davis

Substituted for: House Bill No. 529

By Williams, Bowers

AN ACT To amend Tennessee Code Annotated, Title 62, relative to the "Commercial Real Estate Broker Protection Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 13, is amended by adding as a new section the following:

(a) As used in this Section, unless the context otherwise requires:

(1) "Broker" has the same meaning as used in Tennessee Code Annotated, Section 62-13-102;

(2) "Commercial Real Estate" means any real estate other than:

(A) Real estate containing one (1) to four (4) residential units; or

(B) Real estate on which no buildings or structures are located and is zoned for no more than one (1) to four (4) family residential units.

Commercial Real Estate shall not include single family residential units such as condominiums, town houses, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis even though these units may be a part of a larger building or parcel of Real Estate containing more than four (4) residential units;

(3) "Real Estate" means and includes leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, situated in this state;

(4) "Owner" means the person or persons to whom the fee interest of Real Estate is titled and does not include a lessee or renter;

(5) "Notice" means a notice specifically referencing an agreement entered into after October 1, 1997, to pay commissions in any

NOTICE OF AGREEMENT TO PAY LEASING COMMISSION

County:

Lot And Block No. or Subdivision/Development Name:

[The Broker], is entitled to be paid certain leasing fees or commissions based on rental income from the above-described real property pursuant to one or more provisions of the following written instrument (the "Instrument"):

Name of Parties to Instrument:

The Owner of the Property Is:

[NOTE: Any party seeking details or any other information regarding the said Instrument shall rely only on the Instrument. Without the express written consent of all parties to the said Instrument, neither the Instrument nor any other information regarding the Instrument shall be included in this Notice.]

THIS NOTICE made for the purpose set out above to be effective as of the day and date first above written.

STATE OF _____

COUNTY OF _____

The Undersigned Broker, being first duly sworn, hereby certifies that the foregoing Notice of Agreement to Pay Leasing Commission is true and correct, and that the said agreement to pay leasing fees or commissions remains in force and has not been terminated.

This the ____ day of _____, _____.

BROKER:

By: _____

Print Name: _____

Title: _____

[NOTE: Insert the appropriate acknowledgment form as required by law and have the broker's signature properly acknowledged.]

(6) "Subsequent Owner" means a purchaser of commercial real estate from the owner or from a previous subsequent owner, but will not include the transferee or purchaser of commercial real estate pursuant to a sale conducted pursuant to T.C.A. §§67-5-2501 et seq.

(b) A broker who pursuant to a contract in writing entered into after October 1, 1997, has earned and is owed a fee or commission payable over time with respect to a lease or upon the exercise of an option for renewal or expansion of the lease (whether payable over time or in a lump sum) from the owner of commercial real estate pursuant to such written contract for his or her services in connection with a lease of commercial real estate, shall have a cause of action to enforce the contract with respect to such fee or commission against a subsequent owner, to the extent such fee or commission accrues during the time such subsequent owner holds title to such commercial real estate, even though the subsequent owner is not a party to the contract, if and only if the subsequent owner has notice of the contract as provided in this section with respect to such fee before obtaining title to the commercial real estate. There shall be no prohibition against a broker giving such notice as required by this section, and any such prohibition is void and unenforceable.

(c)(1) The obligation of a subsequent owner shall be subject to the terms, conditions and defenses available to the contracting parties. A subsequent owner shall be liable for such fees or commissions only to the extent that said subsequent owner receives rents pursuant to leases with respect to which the broker is entitled to receive a fee or commission under the written contract referenced in the Notice provided for in subdivision (a)(5) of this Section.

(2) Nothing in this section shall be construed to change any agreement between an owner and a subsequent owner or to release an owner from any liability to a broker for such fees or commissions or to restrict or prevent a third-party claim by a subsequent owner against an owner or a previous subsequent owner for indemnification against a claim made by a broker against a subsequent owner based on a liability of such owner or a previous subsequent owner to such broker.

(3) A broker may enforce an obligation under this section against a subsequent owner by filing suit in a court having appropriate jurisdiction within the latter of the following but in no event more than ten (10) years after the recording of the notice:

(A) One (1) year after the transfer of ownership from the owner or a previous subsequent owner to a subsequent owner, or

(B) One (1) year after the claim for a fee or commission accrues.

(4) A notice containing only the information provided in subdivision (a)(5) of this Section may be recorded pursuant to this Section in the office of the register of deeds in the county where the property is located, and such register of deeds shall accept such notice for recording. After the notice is recorded, the person who tendered it for recording shall promptly deliver a copy to the owner of the subject commercial real estate. Such delivery may be by personal delivery, certified mail, or any delivery service that provides proof of delivery.

(5) Any notice that may be recorded pursuant to this section shall be deemed to be authenticated and eligible for recordation only if such notice conforms to the requirements of subdivision (a)(5) of this Section. The register of deeds will index this recorded notice under the name of the owner identified in the notice and shall index such recorded notice in the reverse index under the name of the broker who is a party to the document.

(6) Upon a written request by the owner or subsequent owner of the subject commercial real estate, made after all fee or commission rights, with respect to which a notice has been recorded under this Section, have been paid in full, or have otherwise been discharged, expired or otherwise are no longer enforceable under applicable law, the broker who recorded the notice (or that broker's successor in interest) shall record a release of that notice with the register of deeds for the county where that notice was recorded.

(7) This Section shall not be construed to create a lien on any commercial real estate to which this Section applies.

(d) The prevailing party in any litigation seeking to enforce the cause of action granted in subsection (b) of this Section or in seeking to recover damages or other relief for the wrongful refusal or failure to release the notice as required by subdivision (c)(6) of this Section, shall be entitled to recover attorneys' fees and court costs incurred by reason thereof from the non-prevailing party.

(e) No title examiner, title insurer, abstractor or closing agent shall have any responsibility or liability related to the contents of any document that is the subject of a Notice recorded pursuant to this section so long as such title examiner, title insurer, abstractor or closing agent fulfills its obligations, if any, under existing law and its contract to disclose in its title report, abstract, commitment or policy the existence of such Notice.

SECTION 2. This act shall take effect October 1, 1997, the public welfare requiring it.